

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

KENNETH A. KRASNE	*	CIVIL ACTION
COURT APPOINTED RECEIVER FOR	*	
LIFEGERE, INC.	*	
VERSUS	*	NO. 6:07-CV-1849
LL FITNESS, INC, d/b/a	*	
MASSAGE KING	*	JUDGE
	*	HAIK/MAG. METHVIN

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

MAY IT PLEASE THE COURT:

FACTS

LifeGear, Inc. dba EarthGear Therapeutic Innovations Co., dba LifeCare, dba Essence went into Receivership on May 3, 2007. (Ex. 1). At that time, the defendant owed it \$240,493.75. On November 8, 2007, the Receiver, Kenneth Krasne, filed the instant suit against the defendant, claiming that it owed the plaintiff \$240,493.75. The defendant filed an Answer and an Amended Answer and Cross Claim (Documents 5 and 18 respectively). The defendant disputed said amount, but agreed that it owed the plaintiff \$100,000.00 (Ex. 2, excerpts from the deposition of Brian Leleux, the CEO of the defendant – page 1 lines 22,23 and page 57 lines 21-24).

Additionally, the defendant claimed that it should be credited the amount of \$3786.32 (Paragraph 3, Amended Answer and Cross Claim (Document 18)). However, in his deposition, Mr. Leleux, the CEO of the defendant company, admitted that Freight

Pro, the shipping company he alleged was going to charge him the \$3786.32, hasn't charged him for said amount. (Ex. 3 Deposition of Mr. Leleux p.10/15-11/13).

LAW AND ARGUMENT

Under Fed. Civ. Pro. Rule 56(c), summary judgment is appropriate "if the pleadings, depositions, answer to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

1. The defendant admitting owing the plaintiff \$100,000.00

In his deposition, Mr. Briam Leleux, the CEO of the defendant company admitted that the defendant owed the plaintiff \$100,000.00. (Ex. 2)¹ Acknowledgment of a debt may be made verbally, in writing, or in other ways." *Bracken v. Payne & Keller Co., Inc.* 970 So.2d 582 (La. App. 1st Cir. 2007). In the instant case, Mr. Leleux acknowledged, under oath, that the defendant disputed about \$140,000.00 of the debt to the plaintiff, but acknowledged a debt of \$100,000.00. Therefore, as a matter of law, the plaintiff is entitled to a partial judgment, in the amount of \$100,000.00, in its favor.

2. The defendant claim for set off in the amount of \$3786.32 should be dismissed

In his deposition, Mr. Leleux testified that he had no proof of the alleged set off claim in the amount of \$3786.32 which was raised in the defendant Amended Answer and Cross Claim.² Mr. Leleux stated that the allegation was moot

¹ Q. I know that you are contesting some of the amounts. By your calculations how much do you owe them?

A. In the range of \$100,000.00 (deposition of Brian Leleux p. 57/21-24 Ex. 2).

² Defendant's Seventh Affirmative Defense alleges that it is entitled to offset or credit in the amount of

because he couldn't actually prove that he would have to pay Freight Pro the above mentioned sum. (Ex. 3 deposition of Brian Leleux 10/15-11/11). Therefore, since there is no material issue of fact, the plaintiff is entitled to judgment as a matter of law, declaring that the defendant is not entitled to a set off in the amount of \$3786.32.

CONCLUSION

For the foregoing reasons, the mover is entitled to:

- 1) judgment in the amount of \$100,000.00;
- 2) judgment declaring that the defendant is not entitled to a set off in the amount of \$3786.32.

Respectfully submitted:

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3786.32 for a demand for payment from Freight Pro.